

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

JOE H. BRYANT, JR.

PLAINTIFF

v.

CIVIL ACTION NO. 3:05cv179TSL-JCS

MILITARY DEPARTMENT OF THE
STATE OF MISSISSIPPI, BY AND THROUGH
THE MISSISSIPPI AIR NATIONAL GUARD, FRANKLIN E.
CHALK, FREDERICK D. FEINSTEIN, ROY A.
GRAHAM, BILLY JOE GRESSETT, DONALD E.
JONES, LANGOFRD L. KNIGHT, F. GREGORY
MALTA, WILLIAM F. PARTEN, ROBERT E.
PIERCE, ROGER E. SHIRLEY, CHARLES F. STEED,
AARON K. WILSON and THOMAS TEMPLE; and
JOHN DOES 1-20

DEFENDANTS

**AMENDED
AGREED ORDER GRANTING [333] PLAINTIFF'S
MOTION TO CERTIFY CERTAIN PRIOR ORDERS AND JUDGMENTS AS
FINAL AND APPEALABLE AND TO STAY PROCEEDINGS,
AS WELL AS DIRECTING THE ENTRY OF FINAL JUDGMENT
AS TO CERTAIN CLAIMS, ISSUES, MOTIONS AND PARTIES**

THIS DAY, THIS CAUSE came on to be heard upon the [333] Motion of Plaintiff Joe H. Bryant, Jr., by and through counsel, to certify certain prior Orders and Judgments of this Court as final pursuant to Fed. R. Civ. P. 54(b) and to Stay Remaining Proceedings, as well as the *ore tenus* motion of Plaintiff, agreed to by the remaining Defendants, to correct and clarify [334], previously entered by agreement of the remaining Parties. Having heard and considered said Motion, having been advised by the remaining Parties that they are in agreement to stay the trial court proceedings as to Malta and Pierce while any appeal as to any issue concerning the content or result of the prior dismissal Orders is pending before the United States Court of Appeals for the Fifth Circuit, and having otherwise been fully advised in the premises, the Court hereby enters the following Order and findings, to-wit:

1. On August 26, 2005, this Court entered its [47] Corrected Memorandum Opinion and Order, which dismissed all claims against Defendant "Military Department of the State of Mississippi, by and through the Mississippi Air National Guard," (the

"Guard"), dismissed certain claims against some of the other Defendants and denied the Guard's [19] Fed. R. Civ. P. 11, 28 U.S.C. § 1927 and Miss. Code Ann. § 11-55-1, et. seq. motion.

2. On July 17, 2007, this Court entered its [235] Memorandum Opinion and Order, and [236] (corrected) Memorandum Opinion and Order, which granted Partial Summary Judgment as to certain claims against the then-remaining Defendants in this Action.

3. On June 17, 2008, this Court entered its [322] Memorandum Opinion and Order, which granted Summary Judgment as to the last remaining claims against the vast majority of the Defendants in this Action. That Order, when read in combination with the Court's prior [235] Order, left certain claims pending against Defendants Malta and Pierce, but none against any other Defendants.

4. The June 17, 2008 [322] Order dismissed the last remaining claims against all Defendants, with the exception of Defendants Pierce and Malta. As a result, all issues pertaining to Plaintiffs' claims and the assertion of Plaintiffs' claims against all Defendants other than Defendants Pierce and Malta, have now been finally decided in those Defendants' favor. The judicial administrative interests, as well as the equities involved, support the direction of final judgment as to the matters certified as final hereby.

5. Accordingly, there is no just reason for delay and upon its expressed direction this entry of Judgment shall be final as to all issues, motions, claims and Parties dismissed or denied thereby, with respect to the entirety of [47], [235], [236] & [322] and all claims against all Defendants other than Defendants Pierce and Malta.

6. Furthermore, the remaining claims against Defendants Pierce and Malta should be stayed if and when any appeal is pursued by any Party regarding the Orders and Judgments certified as final under Fed. R. Civ. P. 54(b) by this Order.

IT IS, THEREFORE ORDERED and FINALLY ADJUDGED that:

- (1) Pursuant to Fed. R. Civ. P. 54(b), this Court makes an express determination that there is no just reason for delay and upon its express direction this entry of Judgment shall be final as to all issues, motions, claims and Parties dismissed or denied thereby, with respect to the entirety of [47], [235], [236] & [322] and all claims against all Defendants other than Defendants Pierce and Malta;
- (2) The dismissal of all Plaintiff's claims against all Defendants, with the exception of Defendant Pierce and Defendant Malta, is to be considered a full and final adjudication of any and all claims against them in accordance with Fed. R. Civ. P. 54(b); and
- (3) All proceedings as to Defendants Pierce and Malta are hereby STAYED pending the final resolution of all appeals by any Party of any Order, Judgment, matter or claim certified as final by this Order.

SO ORDERED and ADJUGED, this the 15th day of January, 2009.

/s/Tom S. Lee

United States District Court Judge

Agreed to and Approved:

/s/ Jay M. Kilpatrick
Jay M. Kilpatrick

/s/ Paul A. Koerber
Paul A. Koerber, Esq.

/s/ Greg Malta
Greg Malta, Esq.